



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/153366

PRELIMINARY RECITALS

Pursuant to a petition filed October 14, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on February 20, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

NOTE: The record was held open to allow the Petitioner to submit additional documentation. Petitioner's attorney in the SSDI matter, Mark Wurtz, submitted, via fax, additional medical documentation. The fax has been marked as Exhibit 2 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.

2. On June 5, 2013, the Petitioner submitted an application for disability-based Medicaid benefits. The Petitioner indicated that he was disabled due to Chronic Obstructive Pulmonary Disease (COPD), 20% disability in his left hand, and severe pain in his legs due to his cholesterol lowering medication. (DDB file)
3. On October 2, 2013, the Disability Determination Bureau (DDB) sent Petitioner a letter advising him that his application was denied. (DDB file)
4. Petitioner filed for reconsideration of the DDB decision on October 14, 2013, stating that his legs had become more sore and that he would become out of breath more quickly. (DDB file)
5. On October 24, 2013, the DDB again denied Petitioner's application and on November 8, 2013, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)
6. In March 2013, the Petitioner filed for Social Security Disability Income (SSDI), stating that he was disabled due to nerve damage to his left hand, back problems/muscle spasms, pain in his calves, high cholesterol and high blood pressure. (DDB file)
7. On September 27, 2013, the Social Security Administration (SSA) denied Petitioner's application. (DDB file)
8. The Petitioner filed for reconsideration of the SSA decision, but on October 29, 2013, the SSA again denied Petitioner's application for SSDI benefits. (DDB file)
9. Petitioner is now awaiting a hearing date to contest the denial of the SSA application. (Testimony of Petitioner)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or his condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Medicaid benefits within three months of applying for SSDI benefits. His application for SSDI benefits was based upon the same disabling conditions listed in his application for Medicaid. The SSA denied Petitioner's request for benefits within 12 months of his application for Medicaid.

Petitioner asserts that his condition has changed since he was denied Social Security Disability Benefits on October 29, 2013. However, the medical documentation that he submitted does not indicate, with any clarity, a change in Petitioner's condition. Further, there is no indication in the record that the SSA has denied Petitioner's request for a hearing to contest the denial of the SSDI application. On the contrary, Petitioner is waiting for confirmation of a hearing date. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority address the merits of Petitioner's application for disability-based Medicaid benefits.

Petitioner should note that he can apply for insurance coverage under the Affordable Care Act by calling [REDACTED] or by going on-line at www.healthcare.gov. In addition, if Petitioner's income falls below 100% of the FPL, he can apply for BadgerCare benefits at access.wisconsin.gov.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits when there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of March, 2014

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 10, 2014.

Sheboygan County Department of Human Services
Disability Determination Bureau